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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,815	02/05/2002	Takayuki Kijima	FUK-P195942.1	6021
3624	7590	06/15/2006	EXAMINER	
VOLPE AND KOENIG, P.C. UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			HERNANDEZ, NELSON D	
			ART UNIT	PAPER NUMBER
			2622	

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/068,815

Applicant(s)

KIJIMA ET AL.

Examiner

Nelson D. Hernandez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6 and 15-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-24 and 33 is/are allowed.
- 6) ☒ Claim(s) 6 and 25 is/are rejected.
- 7) ☒ Claim(s) 26-32 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The Examiner acknowledges the amended claims filed on February 14, 2005. Claims 15, 16, 23, 24 and 26 have been amended. Claims 1-5 and 7-14 have been canceled.

Response to Arguments

2. Applicant's arguments, see pages 10-13, filed on February 14, 2005, with respect to the rejection(s) of claim(s) 6 and 15-33 under 35 USC § 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of newly found prior art.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. **Claims 6 and 25** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,700,610 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

U.S. Patent No. 6,700,610 B1, **claim 1** recites:

An imaging apparatus having an imaging element for accumulating signal charge corresponding to an incident scene light flux in a photo-electric converting element section comprising:

a sweep-out means for sweeping out unnecessary charge in the imaging element;

an operating condition judging means for judging an operating condition of the imaging apparatus;

a control means for controlling a change in frequency of the sweep-out of unnecessary charge by the sweep-out means on the basis of an output of the operating condition judging means; and

said change in frequency being a reduction in the frequency when the operating condition judging means determines that the operating condition requires energy during a sweep-out operation.

Claim 6 in the application recites the limitations "an operating condition judging means for judging a supply voltage level; and a control means for lowering a sweep-out frequency of the sweep-out means when a supply voltage level is lower than a predetermined voltage". In the patent 610', the claims recites "an operating condition judging means for judging an operating condition of the imaging apparatus; a control means for controlling a change in frequency of the sweep-out of unnecessary charge by the sweep-out means on the basis of an output of the operating condition judging means; and said change in frequency being a reduction in the frequency when the operating condition judging means determines that the operating condition requires energy during a sweep-out operation. The claims in both, the application and the patent 610' require the same condition being judge in order to adjust the sweep-out frequency.

Claim 25 in the application recites the limitations "An imaging apparatus comprising:

an imaging element for accumulating signal charge corresponding to incident scene light flux in a photo electric converting element (this is same as "imaging element for accumulating signal charge corresponding to an incident scene light flux in a photo-electric converting element" as in claim 1 in patent 610'),

a power source for powering said imaging apparatus (although this limitation is not explicitly written in claim 1 in the patent 610', it is required in claim 1 in the patent

610' that the sweep-out frequency is changed based on the energy level, "said change in frequency being a reduction in the frequency when the operating condition judging means determines that the operating condition requires energy during a sweep-out operation");

a signal generator having a lower and a higher operating frequency for generating a sweep out signal coupled to said imaging element for sweeping out unnecessary charge from the photo electric converting element (this is similar to "a sweep-out means for sweeping out unnecessary charge in the imaging element" as written in claim 1 in patent 610', by teaching lowering the sweep-out frequency when the imaging apparatus, claim 1 in patent 610' also teaches having a lower and higher frequency);

control means monitoring said power source for controlling said signal generator to generate a sweep out signal having said higher frequency when the supply voltage level is greater than a first predetermined voltage (this is similar to "a control means for controlling a change in frequency of the sweep-out of unnecessary charge by the sweep-out means on the basis of an output of the operating condition judging means" as written in claim 1 of patent 610').

Allowable Subject Matter

5. **Claims 15-24 and 33 are allowed.**
6. **Claims 26-32** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
7. The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 15, the main reason for indication of allowable subject matter is because the prior art fails to teach or reasonably suggest, including all the elements of the present claim, changing the frequency of the sweep-out signal to lower frequency when a supply voltage is lower than a predetermined voltage and lies within a given voltage range.

Regarding claim 16, the main reason for indication of allowable subject matter is because the prior art fails to teach or reasonably suggest, including all the elements of the present claim, changing the frequency of the sweep-out signal to lower frequency when a supply voltage level of the power source is lower than a first predetermined voltage and is greater than a second predetermined voltage which is less than said first predetermined voltage.

Regarding claim 18, the main reason for indication of allowable subject matter is because the prior art fails to teach or reasonably suggest, including all the elements of the present claim, changing a frequency of a sweep-out signal to a lower frequency in preparation for a sweep-out operation to sweep-out unnecessary charge when a supply

voltage level is lower than a predetermined voltage and lies within a given voltage range.

Regarding claim 21, the main reason for indication of allowable subject matter is because the prior art fails to teach or reasonably suggest, including all the elements of the present claim, changing a frequency of a sweep-out signal to a lower frequency in preparation for a sweep-out operation to sweep out unnecessary charge in the imaging element when a supply voltage level of the power source is lower than a predetermined voltage and lies within a given voltage range; monitoring a lens stop responsive to operation of the shutter release button to the fully depressed position; and changing the frequency of the sweep-out signal to the lower frequency when the lens stop is on.

Regarding claim 33, the main reason for indication of allowable subject matter is because the prior art fails to teach or reasonably suggest, including all the elements of the present claim, monitoring said power source when the shutter release button is operated to a first position for controlling said signal generator to generate a sweep out signal having said higher frequency when the supply voltage level is greater than a first predetermined voltage; and monitoring a condition of a lens stop responsive to operation of said shutter release button to a second position of reducing the frequency of the sweep-out signal when a lens stop is not operated and when the supply voltage level is less than said first predetermined value.

Regarding claim 26, the main reason for indication of allowable subject matter is because the prior art fails to teach or reasonably suggest that the control means operates said signal generator to generate a sweep out signal of said lower frequency

when said supply voltage level is less than said first predetermined voltage and greater than a second predetermined voltage which is lower than said first predetermined voltage including all the limitations of claim 25.

Regarding claim 27, the main reason for indication of allowable subject matter is because the prior art fails to teach or reasonably suggest that the control means includes means to prevent operation of the imaging element when the supply voltage level is less than said second predetermined voltage including all the limitations of claim 25.

Regarding claim 28, the main reason for indication of allowable subject matter is because the prior art fails to teach or reasonably suggest that the imaging apparatus includes a shutter release button, a first switch means operative when a shutter release button is moved to a partially depressed position; second switch means operative when the shutter release button is moved to a fully depressed position; and said control means monitoring said power source when said first switch means is operated including all the limitations of claim 25.

Regarding claim 31, the main reason for indication of allowable subject matter is because the prior art fails to teach or reasonably suggest that the control means reinitiates monitoring of said power source when said second switch means is not operated after completion of a previous battery check sequence including all the limitations of claim 25.

Regarding claim 32, the main reason for indication of allowable subject matter is because the prior art fails to teach or reasonably suggest that the control means

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prevents monitoring of said power source when said supply voltage level is less than said second predetermined voltage including all the limitations of claim 25.

Conclusion

8. Since new grounds of rejections have been presented to unamended claims 6 and 25, this Office Action will be **Non-Final**.

Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nelson D. Hernandez whose telephone number is (571) 272-7311. The examiner can normally be reached on 8:30 A.M. to 6:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Ometz can be reached on (571) 272-7593. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


TUAN HO
PRIMARY EXAMINER

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nelson D. Hernandez
Examiner
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NDHH
June 12, 2006